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## *The Committee on Energy and Commerce*

### **Internal Memorandum**

February 14, 2012

TO: Members, Subcommittee on Oversight and Investigations

FROM: Subcommittee on Oversight and Investigations Staff

RE: Hearing on “Regulatory Reform Series #8 – Private Sector Views of the Regulatory Climate One Year After Executive Order 13563”

On Thursday, February 16, 2012, at 10:00 a.m., in room 2322 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled “Regulatory Reform Series #8 – Private-Sector Views of the Regulatory Climate One Year After Executive Order 13563.” This hearing is the eighth in a series on the Administration’s approach to regulatory reform. Its aim is to assess the regulatory climate facing American businesses one year after President Obama issued Executive Order 13563 (EO 13563), including impacts on job creation.

Prior hearings spotlighted the efforts of the Department of Health and Human Services (HHS) and the Environmental Protection Agency (EPA) to review existing regulations, in addition to those rules put forward by the independent regulatory agencies, including the Consumer Products Safety Commission (CPSC), the Federal Communications Commission (FCC), the Federal Energy Regulatory Commission (FERC), and the Federal Trade Commission (FTC). On July 20, 2011, the Subcommittee received testimony from innovators and medical device manufacturers concerning the impact regulations and policies at the Food and Drug Administration (FDA) have had on patient access, innovation, and job creation.

#### **I. Witnesses**

**Andrew F. Puzder**  
CEO  
CKE Restaurants, Inc.

**Robert A. Luoto**  
President  
Cross and Crown Inc.

**Kimber L. Shoop**  
Senior Environmental Attorney  
Oklahoma Gas and Electric Company

**Barbara Walz**  
Senior Vice President for Policy and Environmental  
Tri-State Generation and Transmission Association, Inc.

Additional witnesses may be called at the discretion of the Majority.

## II. Background

The last few years have been busy ones for federal regulators. According to Office of Management and Budget (OMB) data compiled by the Heritage Foundation, in Fiscal Year 2009, which spanned both the Bush and Obama Administrations, major rules added \$13 billion in new costs to the economy.<sup>1</sup> In Fiscal Year 2010 alone, federal agencies promulgated 43 major rules that imposed compliance costs estimated by the regulators themselves at some \$28 billion, the highest annual level since 1981.<sup>2</sup> This regulatory expansion was fueled by, among other things, a number of expensive and complex new rules affecting the energy sector, the nation's industrial and manufacturing infrastructure, and new health care and financial services reform laws, adding potentially thousands of new regulations to the pipeline.

In January 2011, shortly after the 2010 midterm elections, President Obama finally acknowledged that the regulatory system needed to be reined in. "Sometimes, those rules have gotten out of balance, placing unreasonable burdens on business – burdens that have stifled innovation and have had a chilling effect on growth and jobs," wrote the President in a January 18, 2011, op-ed in the *Wall Street Journal*, "Toward a 21<sup>st</sup>-Century Regulatory System," referring to the cumulative body of federal regulations.<sup>3</sup> The President also vowed to take action, promising in his 2011 State of the Union address to "find rules that put an unnecessary burden on businesses" and "fix them" while setting in motion a policy mandating review of existing federal regulations "to reduce barriers to growth and investment."<sup>4</sup>

The details of that policy were set out on January 18, 2011, in an Executive Order entitled "[Improving Regulation and Regulatory Review](#)," EO 13563. It stated that agencies must adopt only those regulatory actions whose benefits justify its costs; that are tailored to impose the least burden on society; that take into account the cost of cumulative regulations; that maximize net benefits; that specify performance objectives; and that evaluate alternatives to direct regulation. EO 13563 also requires that agencies conduct a retrospective analysis of existing rules.

On July 20, 2011, the Subcommittee held a hearing on "FDA Medical Device Regulation: Impact on American Patients, Innovation, and Jobs." Successive witnesses, among them innovators and patients, conveyed the message that regulatory inconsistency and inefficiency at FDA were causing medical device companies to move offshore and launch their products abroad, oftentimes years before they enter the U.S. market, if at all. Award-winning inventor Dr. Robert Fischell went so far as to claim that "unfortunately, the environment that exists at the FDA's Center for Devices and Radiological Health over the past few years is the worst I have experienced in my 42 year career innovating medical technologies" and adding,

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<sup>1</sup> <http://www.heritage.org/research/reports/2010/10/red-tape-rising-obamas-torrent-of-new-regulation>

<sup>2</sup> *Id.*

<sup>3</sup> <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>

<sup>4</sup> <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address>

“unfortunately it is not technology, science, ingenuity or the economy that is standing in the way of success in developing new medical technologies. It is the FDA.”

This hearing will feature the perspectives of businesses across different industries on the impacts of federal regulations and the overall regulatory climate affecting their day-to-day operations, including plans for expansion, investment, and job creation. This hearing will also provide the Subcommittee with an opportunity to check in on the effects of EO 13563, approximately one year after its issuance.

### III. **Issues**

The following issues will be examined at the hearing:

- Over one year after EO 13563 was issued, do the witnesses perceive a net improvement in the general regulatory climate?
- Do the witnesses believe that the Administration’s regulatory reform initiative resulted in any easing of the day-to-day regulatory burden on their companies, including, but not limited to, costs of compliance with rules, predictability, fairness, and consistency?
- Have the witnesses noticed any improvements in the regulatory climate that would lead to both preserving existing jobs and creating new ones?

### IV. **Staff Contacts**

If you have any questions regarding this hearing, please contact Sam Spector with the Subcommittee on Oversight and Investigations Subcommittee staff at (202) 225-2927.